

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION

CIVIL NO. 2:07CV7  
(2:02CR104)

LARRY FRANKLIN PHILLIPS, )  
                                )  
Petitioner,                 )  
                                )  
Vs.                         )  
                                )  
UNITED STATES OF AMERICA, )  
                                )  
                                )  
Respondent.                 )  
                                )  
\_\_\_\_\_

O R D E R

THIS MATTER is before the Court on a petition for a *writ of mandamus* filed by the Petitioner and an application to proceed in *forma pauperis*.

Petitioner's motion pursuant to 28 U.S.C. § 2255 was dismissed by the undersigned on April 3, 2007, as untimely filed. He promptly filed notice of appeal and the Fourth Circuit upheld that dismissal. **See Phillips v. United States, 2007 WL 2164041 (4<sup>th</sup> Circ. July 25, 2007).** However, by letter dated August 13, 2007, the Fourth Circuit notified the Court that the Petitioner had filed a timely request for rehearing. Therefore, the Court has no jurisdiction to rule on the Petitioner's pending motion.

**IT IS, THEREFORE, ORDERED** that the Petitioner's petition for a  
*writ of mandamus* and his application to proceed in *forma pauperis* are  
hereby **DENIED**.

Signed: August 27, 2007



Lacy H. Thornburg  
United States District Judge

